

## Civil Litigation

# Liberals reintroduce bill to streamline and add sanctions to federal judicial discipline process

By **Cristin Schmitz**

(December 1, 2021, 5:04 PM EST) -- The federal government has reintroduced legislation that aims to expedite and add more teeth to the slow and costly process for disciplining Canada's 1,183 superior court judges, while also creating a new discipline process for officials appointed under federal legislation to hold office during good behaviour.

Proposed Bill S-3 (Bill S-5 in the previous 43rd Parliament) was introduced in the Senate Dec. 1 by Sen. Marc Gold, a constitutional law professor and the government's representative in the red chamber.

(S-5 died on the order paper as a result of the federal election.)

The new bill would, according to its summary, amend the federal *Judges Act* to establish a new process for reviewing allegations of misconduct that are not serious enough to warrant a judge's removal from office, and change the process via which the Canadian Judicial Council (CJC) recommends to the federal minister of justice that a judge be removed.

"The reintroduced bill would amend and streamline the process for more serious complaints, where removal from the bench could be an outcome," a Department of Justice press release states.

The government adds "the current process is cumbersome, costly and can be prolonged for years. It needs to be updated in order to make the system less expensive and time-consuming." This echoes the oft-expressed view of CJC chair, Chief Justice of Canada Richard Wagner, who has been seeking reforms to the judicial discipline process for several years.

The government says its proposed amendments also address the current process's "shortcomings" by imposing mandatory sanctions on a judge when a complaint of misconduct is found to be justified by the CJC, but to not be serious enough to warrant removal from office.

New sanctions would "include counselling, continuing education and reprimands."

The government says the proposed law requires the CJC to disclose the number of complaints it receives, and how they were resolved, in its public annual report.

"While rare, complaints against judges that could result in removal from the bench should be dealt with in a more timely, cost-effective and fair manner," Justice Minister David Lametti said in a prepared statement. "Also, for the first time, judges would be accountable for less serious — but nevertheless consequential — instances of misconduct." (However, the council has over the years rapped the knuckles of some judges, for example by issuing expressions of concern, even though the *Judges Act* does not expressly authorize reprimands.)

Since its inception in 1971, the CJC has completed inquiries into eight complaints considered serious enough that they could warrant removal from the bench; four of them culminated in recommendations for removal. A ninth inquiry is under way.

The government said that under the proposed new process, the CJC would continue to preside over the judicial complaints process, which would start with a three-person review panel deciding to either investigate a complaint of misconduct or, if the complaint is serious enough that it might warrant

removal from the bench, refer it to a separate five-person hearing panel.

If appropriate, a three-person review panel made up of a CJC member (i.e. a chief or associate chief justice), a judge and "a layperson" could impose such sanctions as requiring a public apology from a judge, or requiring participation in "courses of continuing education."

If warranted, a five-person hearing panel, made up of two CJC members, a judge, a lawyer and a layperson could recommend removal from the bench to the federal minister of justice, after holding a public hearing.

In a major change, judges who faced removal from the bench would have access to an appeal panel made up of three CJC members and two judges and, finally, to the Supreme Court of Canada, with leave.

"This would streamline the current process for court review of council decisions, which involves judicial review by two additional levels of court, the Federal Court and Federal Court of Appeal, before a judge can ask the Supreme Court of Canada to hear their case," the government said.

The amendments proposed in S-3 would also provide "a funding mechanism" for the new process which aims to "ensure better accountability" for costs as the current process has resulted in the government funding millions in legal fees and other costs when the resolution of complaints drags on for years.

*If you have any information, story ideas or news tips for The Lawyer's Daily, please contact Cristin Schmitz at [Cristin.schmitz@lexisnexis.ca](mailto:Cristin.schmitz@lexisnexis.ca) or call 613 820-2794.*